UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1992/NGO/18
6 August 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Sierra Club Legal Defense Fund, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[27 July 1992]

1. In its resolution 1991/24 of 25 August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities took note of the preliminary report on human rights and the environment (E/CN.4/Sub.2/1991/8) submitted by Mrs. Ksentini, Special Rapporteur, and requested her to prepare a progress report to be submitted to the Sub-Commission at its forty-fourth session.

2. The debate on the preliminary report (E/CN.4/Sub.2/1991/SR.34 and 35) illustrates wide support for this topic and highlights issues of concern raised by Mrs. Ksentini in the report.

3. The Sierra Club Legal Defense Fund welcomes the Special Rapporteur's attention to questions of implementation, including the issue of remedies, in her preliminary report (E/CN.4/Sub.2/1991/8, paras. 69-94). We recognize that

raising human environmental rights issues will generate many types of responses and remedies, some not yet well-developed in human rights forums. Yet the duties and requirements posed by human environmental rights can be accommodated in these forums - the need for such action and the standards to apply in many situations are becoming increasingly clear - and international human rights bodies have always been flexible in facing the diverse array of human rights issues.

4. Internal or domestic remedies may prove useful to the international bodies. We look forward to continued investigation into constitutional and domestic law provisions anticipated by Mrs. Ksentini in her statement in the debate (E/CN.4/Sub.2/1991/SR.34, para. 24). To further that investigation, we have prepared a report entitled Human Rights and the Environment: The Legal Basis for a Human Right to the Environment (April 1992) which we have made available to anyone who wishes a copy.

5. The Sierra Club Legal Defense Fund agrees with Sub-Commission member Mr. Al-Khasawneh that some traditional remedies such as reparation are not always adequate in the human environmental rights context, and that injunctive-type remedies to prevent harm may take precedence in many situations (E/CN.4/Sub.2/1991/SR.35, para. 18). The preventative aspect of remedies has also been raised by Sub-Commission Special Rapporteur Mr. van Boven who indicates that the Human Rights Committee has frequently called upon States to ensure that violations do not occur in the future (E/CN.4/Sub.2/1991/SR.34, para. 18).

6. The inextricable link between protection of human rights and a safe and healthy environment has become increasingly apparent in the last decades. At present, a substantial percentage of the people assisted by the United Nations High Commissioner for Refugees are in some appreciable way environmental refugees; most of the world's forest indigenous people are negatively affected by encroaching development in their traditional lands; whole countries such as Haiti have been so environmentally degraded that they may not be able to maintain even subsistence-level survival for their people in the future and other countries such as Myanmar are on the way to that state unless urgent measures are taken; many Eastern European countries face massive health and development problems because of long-time failure to address environmental concerns; and ecological disasters have occurred in all continents affecting millions of people. These and other equally serious human rights problems demand our immediate attention and meaningful remedy.

7. In light of the importance of human rights and the environment, we were disappointed that human rights and the environment was almost entirely absent from the agenda of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992. This was true even with the request of the Sub-Commission and Commission that the Special Rapporteur Mrs. Ksentini participate as an observer (Sub-Commission resolutions 1990/7 and 1991/24; Commission resolution 1991/44), with a view toward contributing to the work of the Conference.

8. Mrs. Ksentini, however, fulfilled the request of the Sub-Commission and Commission and attended UNCED as an observer. We were very pleased that she also attended a meeting the Sierra Club Legal Defense Fund hosted at the

Global Forum in Rio de Janeiro for non-governmental organizations (NGOs) interested in meeting the Rapporteur and exchanging views on t..e topic of human rights and the environment. Our morning programme included a panel with Mrs. Ksentini; Antonio A. Cançado Trindade, Judge (Ad Hoc) of the Inter-American Court of Human Rights and Professor of International Law at the University of Brasilia; Lalanath De Silva, founder and Executive Director of the Environmental Foundation Ltd. of Colombo, Sri Lanka; Davinder Lamba, founder and Executive Director of the Masingira Institute of Nairobi, Kenya and representative of the Habitat International Coalition NGO at UNCED; and Anthony Simpson, an Australian lawyer who has worked extensively on behalf of the human rights of Pacific Island indigenous peoples and who also was NGO member on the Australian delegation to UNCED. The programme, attended by over 150 NGO representatives from 25-30 nations, was followed by a spirited question and answer period and an all-afternoon informal round-table discussion. The Legal Defense Fund thanks Mrs. Ksentini for her major contribution to the success of this meeting and for her continuing interest in receiving the views of NGOs all across the globe on this critically important issue.

9. The Sierra Club Legal Defense Fund's work with the Sub-Commission and Commission has impressed upon us the unique role of human rights bodies in securing individual human rights and in ensuring implementation of these, including human environmental rights. The work of human rights bodies will complement but not duplicate work of the United Nations Environmental Programme and other United Nations agencies in this area in the same way as presenting women's rights issues before human rights bodies has complemented efforts on behalf of women made by the United Nations Centre for Social and Humanitarian Affairs. Addressing human environmental rights in human rights bodies also benefits from the active participation of NGOs and the availability of remedies to address violations or threatened violations.

10. The Sierra Club Legal Defense Fund heartily approves the call for active participation of NGOs in the work of the new Commission on Sustainable Development established by UNCED to monitor implementation of Agenda 21. 1/ The Commission is not yet established; the General Assembly in its forty-seventh session will determine, inter alia, the relationship of the Commission with other United Nations bodies dealing with issues related to development and the environment. Even so, the mandated Commission on Sustainable Development to oversee implementation of UNCED Agenda 21 will not conflict with or duplicate the separate, on-going work of the Sub-Commission and the Commission on Human Rights regarding the human rights dimensions of either the right to environment, the right to development, or the two areas together. Likewise, we do not see any conflict or duplication between the new Commission and the existing United Nations Environment Programme: each body has its own mandate and unique role to fulfil in addressing issues regarding the environment.

11. To assist the General Assembly in determining the particulars of the new Commission on Sustainable Development, especially regarding its relationship with other existing United Nations bodies, we recommend that the Sub-Commission consider asking the General Assembly to invite Mrs. Ksentini and the Director of the Centre for Human Rights to its deliberations. The Sub-Commission also could request the General Assembly to provide for NGO participation as it works on this issue, in light of the role of NGOs in Agenda 21.

12. The Sierra Club Legal Defense Fund encourages particular attention to the issue of human rights and the environment at the up-coming World Conference on Human Rights and the active participation of the Special Rapporteur there. We also encourage the participation of all the Sub-Commission's thematic rapporteurs in that Conference. The issues of remedies (Mr. van Boven), right to freedom of opinion and expression (Mr. Türk and Mr. Joinet), right to housing (Mr. Sachar), are increasingly important worldwide and they all have aspects which relate to human rights and environment.

13. The Sierra Club Legal Defense Fund looks forward to Mrs. Ksentini's Progress Report and to what we know will be a productive debate. We have been pleased at the ever-expanding interest in this topic and its many dimensions, not only from other non-governmental organizations, but from Sub-Commission members and Governments. We anticipate even more interest as the work progresses.

Note

1/ Agenda 21 constitutes the blueprint for new action by nations in the next decades to address a myriad of serious global environmental problems (A/CONF.151/4 (Part IV) and A/CONF.151/L.3/Add.38). Explicit commitment to strengthening the role of NGOs is found in its chapters 23-29 (A/CONF.151/4 (Part III), as amended).